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ABSTRACT

Several reports were considered at the second meeting of the National Commission on New Technological Uses of Copyrighted Works (CONTU). A proposed study to collect data on the present status and extent of photocopying (sponsored by the National Commission on Libraries and Information Science (NCLIS)) was presented and its eventual usefulness to CONTU was discussed. A resolution from NCLIS asking CONTU to request that Congress take only interim action on photocopying was found inappropriate for action by CONTU. A representative from the Institute for Computer Sciences and Technology of the National Bureau of Standards presented objectives and areas of study for a project on the interaction of law, economics, and technology in the use of copyrighted materials. Of special interest was the ownership of material translated into machine or some other code for later retrieval. Another study, done at Indiana University, dealt with library photocopying trends in the academic community and the costs and fees involved. The ad hoc group on photocopying discussed the hazy area between fair use copying and systematic reproduction of copyrighted materials. Future directions and meetings were considered. (LS)

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ED127936

NATIONAL COMMISSION

ON

NEW TECHNOLOGICAL USES OF COPYRIGHTED WORKS

Meeting No. 2

November 19, 1975

9:30 a.m. - 4:00 p.m.

U.S. DEPARTMENT OF HEALTH, EDUCATION & WELFARE
NATIONAL INSTITUTE OF EDUCATION

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Wilson Room
Library of Congress
Washington, D. C.

IR003899

Members Present:

Judge Fuld, Chairman

Mr. Nimmer, Vice Chairman

Dr. Boorstin, Librarian of Congress

Barbara Ringer, Register of Copyrights

Mr. Cary

Dr. Dix

Mr. Hersey

Ms. Karpatkin

Mr. Lacy

Mr. Miller

Mr. Perle

Mr. Sarbin

Mr. Wedgeworth

Ms. Wilcox

Others Present:

Mr. Hamilton, Deputy Register of Copyrights

Mr. Levine, Executive Director, CONTU

Mr. Lorenz, Deputy Librarian of Congress

Mrs. Kegan, Assistant Librarian of Congress

Mrs. Morrisey, Executive Assistant to the Librarian of Congress

AGENDA

Report of the ad hoc group on photocopying
(Messrs. Dix, Hersey, and Lacy)

Report on activities of the group called together by the National Commission on Libraries and Information Science and the Register of Copyrights to seek more agreement on solutions to the photocopying issue

Resolution of the National Commission on Libraries and Information Science concerning possible interim action on the photocopying issue in revision of the Copyright Law

Report on the study on the use of copyrighted material in scientific and technical information systems undertaken by the Institute for Computer Sciences and Technology, National Bureau of Standards

Suggested education on computer plans and capabilities

Report on Indiana University's study on library photocopying

Continued discussion of report of ad hoc group on photocopying

Plans for next meetings

1. Judge Fuld called the second meeting of the Commission to order at 9:45 a.m. He congratulated and welcomed the new Librarian of Congress, Daniel J. Boorstin, a member of the Commission.

2. Consideration of the ad hoc group's report on photocopying. On behalf of the other members of this subcommittee, Mr. Lacy expressed regret that delaying mail service had prevented members from receiving copies of the report earlier this week. Copies were now being made and distributed at the table. Members were asked to look at it between morning and afternoon sessions so that there could be preliminary consideration of it today, although it was the consensus that full discussion of it would need to be carried over to further meetings.

3. NCLIS report re efforts to resolve photocopying issue. Alphonse Trezza, Executive Director, National Commission on Libraries and Information Science, recited the background of the Commission's work leading to publication in 1975 of the Commission's "National Program for Library and Information Services: Goals for Action." Copies were distributed at the table. This report, endorsed by major professional library and information science associations, includes among its program objectives the development of "a nationwide network of library and information service." This national sharing of resources would involve the coordination in Washington of a variety of state and regional networks; the national plan envisions the use of existing resources -- finding and filling the gaps that now exist.

Copyright matters are, of course, very much involved in networking, and the Commission on Libraries, in cooperation with the Register of Copyrights, has been attempting to bring librarians, authors, and publishers together in an effort to work out some compromise on the difficult photocopying question. A revision of the 1909 copyright law and resolution of the photocopying issue are essential for the benefit of all. NCLIS, therefore, has hoped that some agreement could result from the discussions begun in 1974. The group assembled for this purpose soon divided itself into two sub-groups -- librarians continued to meet on the 2nd floor of LC ("upstairs") and the publishers gathered on a lower floor ("downstairs").

These "upstairs-downstairs" discussions have sharpened the differences in view and have made the representatives of librarians, authors, and publishers more aware of each other's concerns about photocopying. The group suggested that the Commission undertake a study of library photocopying to collect information on the amount of such copying and to experiment with some methods of compensating for such copying. The Commission indicated its willingness to undertake such a study, provided that the parameters of the study were set in advance by the group that has been discussing this matter. A committee of six persons, representing both publishers and librarians, was appointed. Because the cost would be beyond the resources of NCLIS, a grant from the National Science Foundation was sought. The NCLIS staff is currently writing a Request for Proposal, which it hopes to issue by January 1, 1976, and a specialist is being employed to determine a valid sampling technique. The results of the study, which will take 9 months, are expected to be useful data on the copyrighting issue.

Judge Fuld mentioned that this study might make it unnecessary for CONTU to collect such information. Mr. Trezza agreed that the findings should be useful to CONTU; the Commission on Libraries would like to be able to contribute this information to CONTU's work in this area; an advisory committee for the study will be formed, and Mr. Trezza would like a representative from CONTU on it.

In response to a question from Dr. Boorstin, Mr. Trezza summed up the central issue as follows: "The librarians say there is no violation of copyright going on, except in rare instances. A given article is duplicated nationwide so infrequently that it is not an issue. The publishers maintain that there is widespread violation going on." There is also a difference in view as to what constitutes "systematic" copying -- "deliberate" copying as opposed to "haphazard" copying. Both sides in the controversy seem fearful about what may happen in the future.

Mr. Cary asked about the distinction between journal and book copying. Mr. Trezza said there is diversity in the copying of journal material by libraries. The bulk of the copying involves material in scientific and technical journals. There is also copying from scholarly and research journals. Material in popular journals is copied for temporary use and to replace lost or missing issues. The study will be limited to systematic copying. It will not explore mechanisms for payment in detail, but it is hoped that a payment system would be workable -- "payment would probably work better in centers."

Miss Ringer gave further background about the "upstairs-downstairs" discussions. She commended NCLIS for its national plan and added that the program document laid out plans for a coordinated national information network, with the Library of Congress in a central role and regional library networks providing basic resources in the areas they cover. This master plan envisions the sharing of copyrighted material; it apparently assumes that no one will be sending books through the mail.

Mr. Trezza anticipated that the lending of actual materials would still be heavy. Photocopying will increase for items that are difficult to get, for preservation purposes, and for currency purposes. But if an item is important, people will purchase it; "photocopying is no substitute for having the actual copy." Mr. Trezza emphasized the interdependency of authors, publishers, and librarians. "It is essential that we help each other."

Mr. Lacy expressed some concern about the study's plan for setting up a sample to determine how much copying is being done. This quantitative aspect could be deceptive. Since results will not be known until late in 1977, such data will not be very useful to this Commission. It might be more helpful if CONLIS could concentrate on the study of the procedures and methods of payment rather than develop an elaborate sampling procedure. Keeping a record for every copying transaction would be costly and complicated; other more feasible possibilities need to be explored. The NCLIS study could make a useful contribution in this area, and it should not concern itself with only one method.

Mr. Trezza answered that the data to be developed in this study will not be obsolete by the time it is available. He is looking ahead to the copyright amendments that may be required in future years. There is need for more specific data in connection with the photocopying controversy. "What is the nature of photocopying by libraries in consortia as opposed to individual libraries not in a consortia?" Mr. Wedgeworth supported the idea of examining quantitative data. It will be useful, he explained, to see whether there are "distinct patterns of relationships" in library photocopying. The payment mechanism is still an open question, and it is difficult to discuss payment or royalties without more facts about actual copying. The idea behind the study is to find out whether there are significant areas of copyright infringement; if so, then a mechanism can be found to serve as a fair and equitable compensation system. A significant factor here is the fact that representatives of publishers and librarians have come together and agreed that such a study is needed.

Mr. Lacy pointed out that we already know that a substantial amount of journal material is being photocopied. The counting and sampling are going to take time and for CONTU's purposes this data may not add much. The figures of course will change from year to year. He repeated his recommendation that NCLIS focus on procedures for the future and devote less attention to the quantitative measurements.

Miss Ringer endorsed Mr. Wedgeworth's comments. This is the first time the two sides in this controversy have been able to come together in this area -- they have agreed on the need for and dimensions of this study. It is important that it go forward in the directions planned. The question has been raised as to the extent to which hard copy lending will go on in research libraries -- we need an answer to this. In the working group's discussions a lot of effort went into the consideration of a payment mechanism that would involve the coding of each journal article and sending a copy of the code to the publisher when items are photocopied, with the publishers handling the paper work. This should be tested to see if it might be practical. CONTU might find it useful to participate in the NCLIS' advisory group for this study.

Dr. Dix spoke about the fears on both sides -- publishers and authors are concerned about what may happen in the future and whether the revised copyright law will take account of the future situation; librarians and educators are fearful that for economy reasons there will have to be more ways of sharing resources and that any restriction through the copyright law on such sharing must be avoided. For these reasons the NCLIS study is very important. Dr. Dix anticipated continued lending of books, but without the ability to make wide use of photocopying networks will be handicapped in journal lending.

In response to Ms. Karpatkin's question as to whether the study's results would enable CONTU to get a perspective on what can be expected in photocopying for the future, Mr. Trezza referred to an earlier study showing projections ahead for interlibrary loan of journals. He felt CONTU would need to examine other studies such as that one.

Mr. Hersey mentioned that the ad hoc group's report describes six possible mechanisms for payment. He shared Mr. Lacy's concern that alternative methods be considered fully rather than discarding the idea of such mechanisms because one possiblity may seem too costly. All possibilities should be examined. In response to Mr. Nimmer's suggestion, Mr. Trezza indicated he would make available a copy of the Request for Proposal. Mr. Sarbin underscored the need to examine trends and the effect of such changes as the deterioration of the U. S. postal service on the willingness of libraries to entrust materials to the mails. Mr. Perle spoke of the importance of focusing on the first part of CONTU's charge -- study of the reproduction and use of copyrighted works in conjunction with automatic systems, including the ability of such mechanisms to produce hard copy.

4. Mr. Levine read the following Resolution on Library Photocopying and Copyright adopted by the National Commission on Libraries and Information Science on September 25, 1975 and transmitted to CONTU:

"WHEREAS, the problem of resolving the conflict between the expressed need of libraries to share resources via photocopying and the protection of the rights of publishers and authors has so far eluded solution; and

"WHEREAS, the Courts and Congress have indicated that the two communities should work together to produce an equitable proposal for dealing with the problem; and

"WHEREAS, the Conference on Resolution of Copyright Issues (which was convened jointly by the National Commission on Libraries and Information Science (NCLIS) and the Copyright Office in the Library of Congress, and which includes representatives of all concerned constituencies) has recommended a study of the volume and patterns of photocopying and of the feasibility of a royalty payment mechanism; and

"WHEREAS, the NCLIS has, in cooperation with the Office of Science Information Services of the National Science Foundation (OSIS/NSF), agreed to fund such a study to begin approximately 1 January 1976; and

"WHEREAS, the newly-established Commission on New Technological Uses of Copyrighted Works (CONTU) is just organizing to begin fulfillment of its mission, the results of which can be expected to have substantial impact on both the understanding of ramifications and the approaches to solutions of current and potential future copyright problems.

"NOW, THEREFORE, BE IT RESOLVED: That the NCLIS suggest to CONTU that it consider requesting the Congress to take only interim action on the photocopying issue in the revision of the

copyright law until: (1) the results of the NCLIS study are available; and (2) the CONTU has made its report and recommendations on library photocopying."

In discussing the Resolution Judge Fuld asked whether NCLIS should not make this request to the Congress. Mr. Trezza said that NCLIS felt this was CONTU's responsibility.

Dr. Boorstin pointed out that it would be inappropriate for CONTU to inform the Congress on the question of the permanency of its legislation; rather, CONTU's assignment is to try to make provision for the unpredictable and to provide protection for various interests in a framework that will be flexible. There will be important changes in the future in xerography and predictions for the future are important.

Mr. Trezza recalled the Congress' request that the librarians and publishers try to resolve the photocopying issue. NCLIS felt that CONTU would want to reply to the Congress in this context.

Mr. Nimmer raised the question whether delay on the photocopying question might be a roadblock to early revision of the copyright law, which he would not favor. Mr. Lacy agreed with Dr. Boorstin that it would be inappropriate for CONTU to take the action proposed in the NCLIS resolution. Mr. Perle moved that the Resolution be tabled. The motion seconded and carried, with Mr. Wedgeworth abstaining from the vote. Mr. Sarbin added that it might be appropriate for NCLIS to send such a Resolution forward, but others suggested that this ought not to be done without further consultation with this Commission.

5. Michael S. Keplinger, Institute for Computer Sciences and Technology, U. S. Bureau of Standards, reported on an analysis on the Interaction of Law, Economics, and Technology in the Use of Copyrighted Material. The objectives of this project, which is being undertaken by the Institute at the National Bureau of Standards, are:

a. A technical analysis of current practices and trends in scientific and technical information systems;

b. Study of the legal environment, including the copyright laws, in which such systems must function;

c. Investigation of the economic consequences of using copyrighted materials in automated information systems;

d. Identification of a set of alternative mechanisms to permit fair business dealings in the use of copyrighted works in such systems;

e. Analysis of the economic, technological, and legal implications of that set of mechanisms for science information systems;

f. Findings and recommendations to help identify and designate policy issues important to the continued availability of scientific and technical information.

Studies are under way in six areas:

a. Description of how the computer and copyright questions have arisen;

b. Overview of technological trends important for the development of science information systems;

c. Discussion of the legal environment within which these systems must function;

d. Identification of issues important for copyright;

e. Description of the characteristics of a set of mechanisms to promote fair business dealings in information;

f. Discussion of the method of analysis of the impacts of these mechanisms.

Points brought out in Mr. Keplinger's presentation included the following:

a. The "change in emphasis within the economic structure from the production and dissemination of tangible goods to the production and dissemination of information" requires a rethinking of old concepts of property rights in information and their role in an "information-based, highly technologically sensitive economy."

b. The characteristics of information are currently being studied in several projects sponsored by the National Science Foundation.

c. New developments in computer and information technologies are changing the thinking of those planning information systems and services; there are more applications in commercial and academic environments. The growth of networking, development and use of mini-computers, mixed-media systems, hardware advancements, and new security techniques are trends to be taken into account.

d. The discipline of information technology is concerned with "means for effective use and management of information," and this technology is being increasingly used in the intellectual processes involved in the compilation of reports and access tools. The systems are being used to edit draft material prepared by keyboard input, rearrange it, output it to a computer-photocomposition device which produces final copy.

e. The trends are both (1) in the direction of large systems on single computers with central data storage and dissemination and (2) small dispersed installations with individual data storage.

f. Linking of dispersed data bases in specialized subject areas into a comprehensive information service system means that "one machine reproducible copy of a copyrighted work could truly serve many users."

g. Local information systems are also going to be more prevalent as a result of the mini-computer and micro-computer.

h. These advances, along with mixed media systems, will mean significant changes in the ways information is packaged for dissemination.

i. The legal environment involves the copyright law and other law concerned with issues of antitrust, regulation, licensing, and contracts. The copyright law is of course of primary importance because it deals with property rights in information. "The characteristics of copyright which are the most significant in terms of their technological and economic implications are the nature of the copyright itself and the acts which constitute an infringement. A copyright protects the form of expression of an idea and not the idea itself." There is also the question of at what point "the copyright owner may exert control over the use of his work, either at the time of output or input to the information system."

Questions to be considered include: Is it infringement to "translate" the printed work into a binary code for use in computer systems? Would processing the work in the system be a "performance?"

Among the very complex issues involved are the concerns of systems developers that strict enforcement of copyright will interfere with the development of information systems. Authors, publishers, and other copyright proprietors are concerned about the economics of their products if copyright does not cover the use of their works in computer systems. And the consumer is concerned about access to the "national resource of scientific and technical information." Concerns also arise over the effect secondary uses of copyrighted works in systems will have on circulation and income.

"If the present revision bill passes, the question of property rights in the new technologies will be largely unchanged." A second possibility is "a legislated solution," based on consideration of the needs of all parties involved.

Mechanisms to be considered include: requiring each user to negotiate with each copyright owner; publishing a register of rights and permissions in conjunction with the Copyright Office's listing of copyrighted journals; a voluntary clearinghouse serving as a focal point to bring together users and proprietors; a voluntary participation clearinghouse under government auspices; a clearinghouse operated by the Government with compulsory licensing. Each of these mechanisms is being examined to determine their technical, economic, and legal implications. Transaction costs, enforcement costs, royalty distribution possibilities, costs of

required technological resources, and the kind of legal problems involved will all be examined.

In the discussion Judge Fuld asked whether it would be possible to have some mechanism to show the output from the computer of copyrighted material. Mr. Keplinger anticipated some built-in capacity for auditing materials that pass through the system, a mechanism to inform one of who had access to the piece and for what purpose. Changes are being made to meet the challenges of the privacy act that will help in the copyright situation.

Mr. Wedgeworth referred to problems of computer security in support of individual privacy and the problem of ancilliary uses of mixed media systems.

Mr. Lacy recalled the definition of the copyright problem in this area as the insertion or translation of information that previously happened in another form. His impression, he indicated, was that this issue with respect to computer systems has appeared in another form -- where the structure relates to the person developing the computer data base as being the proprietor. Much of the information used by the creator of the information system in this context is in the public domain. It is the compilation of this information for use in the computer that becomes the item to be copyrighted. A fundamental issue, then, is the question: How do you provide for sufficient protection of the data bank created? How are the investment and development of programs for the management of and extraction of data from such a system to be protected? Some incentive is needed for undertaking the expense of developing a program. The creator of the program should get some reward from those who use it. The individual components of a program that could be utilized in another program need protection.

Mr. Keplinger said the project he has outlined does not deal with computer software. There are cases, however, where publishers issue both conventional and computer-based abstracts of publications. Mr. Nimmer referred to changes in property concepts as a result of the development of computer technology. There has been a distinction between the facts conveyed and the manner of presenting those facts. Does computer technology change this distinction between the facts and the expression of those facts? Mr. Keplinger indicated that in the scientific area this distinction is small.

Afternoon session:

Mr. Perle inquired whether this Commission could have access to the information developed by the studies described by Mr. Keplinger before the project's final report was available. Mr. Keplinger said the study group would be in close contact with Miss Ringer; he will be glad to make progress reports; the project is expected to be finished in November 1976. It is still an open question about including consideration of the proprietary rights of a developer of a data bank.

Mr. Cary inquired about the origin of the project and NSF's interest in sponsoring it. Mr. Miller pointed out that NSF's functions include the making of grants for studies in this area. Mr. Lacy emphasized again the need to look into problems of compilation of data into computerized form, particularly in the framework of 30-40 years hence. Judge Fuld thanked Mr. Keplinger for his informative report.

6. Education on computer plans and capabilities at the December 18 and 19 meeting was discussed. IBM has indicated its willingness to make its facilities available for this meeting, Mr. Levine reported. He asked whether the members believe this to be desirable at this point. Manufacturers of software and hardware have interests in this area; should this presentation be pursued or should alternative ways of education in this area be considered?

Some reservations were expressed; computer firms may benefit from the ultimate work of the Commission; there was mention of looking at sophisticated installations in Washington. IBM is part of an "over-all framework" and the total education package should be known soon. It was decided to begin with IBM (a motion offered by Mr. Sarbin was seconded and passed) in order to learn from a computer manufacturer more about computer capabilities for the future. Mr. Levine will make arrangements for an IBM presentation in December and will develop an outline of a fuller educational program, as requested by Ms. Karpatkin.

7. Mr. Fry, Dean, Graduate Library School, Indiana University, reviewed a library photocopying study undertaken at the University of Indiana. This project has involved examination of trends in the academic community (university, public, and special libraries) and in the publishing community (society, university, and commercial presses and not-for-profit publishers). The final report, dated November 1975, "Economics and Interaction of the Publisher-Library Relationship in the Production and Use of Scholarly and Research Journals," will be made available to the Commission. Its findings were summed up by Mr. Fry: publication costs are rising; the capability of libraries to respond in terms of acquisition of journalsis deteriorating; declining library budgets are a serious factor; five years ago the ratio of book acquisitions to journals was 60-40 percent of the expenditure for acquisitions; in 1973 this situation had been reversed; journals are now taking about 60 percent of academic libraries' funds for acquisitions and books 40 percent; rises in personnel salary costs are reducing the amounts available for acquisitions; materials' expenditures are declining each year; there is more dependence by publishers on revenue

from journal subscriptions; these are becoming more institutionalized; except in the case of marginal journals there is no indication that libraries are cancelling subscriptions on the basis of price; there is little evidence of any impact yet from computer composition or microform. The traditional journal is still the principal means of communication for this kind of information.

Foreign subscriptions represent the difference between profit and loss or the difference between a small and a large deficit. U. S. subscriptions to foreign journals have declined rapidly; subscriptions to foreign journals account for about 55 percent of total subscriptions. Mr. Fry emphasized that publishers and librarians are facing the same problems -- they need to work together to find useful solutions. He referred to the concern in other countries and the studies undertaken elsewhere, including that of the Institute of Physics in London in conjunction with the British National Library's Lending Division.

About 40 percent of libraries today make a charge when they lend materials. This charge varies from postage costs to part of other handling costs. The actual cost of lending an item has been found in other studies to be about $7.50 Charges assessed average about $3.00 per item. The British study will attempt to collect data on the kind of materials borrowed from the British National Library. It is believed that the large majority of materials come from periodicals, not books.

The growth of consortia and networks enters into the matter too. The average research library today belongs to two or more networks; this is increasing. The U. S. Office of Education is doing a study on the proliferation of consortia and networks at all levels -- local, State, national. Lending is also increasing, but it has not appeared to be related to declining subscriptions. The latter are the result of the reductions in library budgets and the rising personnel costs.

Different groups of publishers have been affected in different ways. Those with strong marketing capability have had less adverse effects. University presses, which are responsible for more than 300 journals, are facing disaster. They have been very dependent upon subsidies from universities, and changes in these are forcing them to drop journals. There are many not-for-profit journals with limited circulation and no marketing capability. Also, less advertising has meant heavier dependence by publishers on subscriptions.

It is not yet clear what particular motivating factor is most significant in the decisions to discontinue a particular foreign journal subscription. The American Council on Learned Societies is helping to get current data on this question. Most libraries evaluate journals in terms of their usefulness.

Libraries are postponing decisions on binding; they are eliminating duplicates in branch libraries, and they are dropping abstracting and indexing services. Ms. Wilcox asked about the effect of consortia

on such decisions with respect to particular journals. Mr. Fry explained that the study has agreed not to identify individual journals. Mr. Lacy stressed that the decision is usually in terms of not to subscribe to a new journal rather than to cancel an existing subscription. It is important to have new journals, and when the cost prevents a library from subscribing, it becomes very difficult to launch new journals.

Dr. Dix added that some libraries take the view that they will not add a new title until they drop an old one. It is difficult to measure the damage done to scholarship by the dropping of journal titles by libraries. Mr. Fry said the Indiana study indicated a growth rate of 3 percent in journal births -- about 3,000 new ones emerge each year, with 2,000 dying.

There were questions about the stimuli for journal loan requests; this was outside the scope of the Indiana study. There are data showing that the number of readers of each article is low.

In response to a question from Mr. Hersey about charges for loans, Mr. Fry said that most libraries making such charges are attempting to recover part of their costs. Consortia are also saving libraries a considerable amount through cooperative cataloging and these savings can be applied to acquisitions. Some of the consortia are trying to expand journal coverage. An up-to-date study of the impact of consortia is needed. Mr. Cary asked about cost data on the merits of using xerographic forms of copying as opposed to microfilm. Such data apparently had not surfaced from this study. Mr. Fry did say that there had not been much response to questions about requesting permission to copy from publishers. Libraries view this as a cumbersome procedure that takes a lot of time, and if the permission were refused, it would be regarded as a "disadvantage."

Mr. Wedgeworth added that libraries consider their copying to be in the area of "fair use." He referred to an ARL study about charges for photocopying in lieu of interlibrary loan. This study shows that while most libraries do not recover the full cost, there are many reasons for assessing the charge. The largest part of the fee is to cover part of the cost of searching to see whether the library has the item.

8. Continued discussion of report of ad hoc group on photocopying.

Mr. Nimmer had some reservations about the position expressed in the report that reproduction of no more than one copy of one article for one patron should not be regarded as an infringement. He was not convinced that this was a proper beginning assumption. The Commission's assignment is not confined to library activities; it concerns photocopying more generally, excluding only photocopying for face-to-face teaching activities. Section 108 does not say that reproduction of one article for one person is not an infringement as far as the patron is concerned. Mr. Nimmer could see reproduction of one page or one paragraph but not the entire article. This seems like an arbitrary line, although he understands that publishers generally have agreed to this. He is not persuaded by this

de facto agreement between publishers, librarians, and authors. It is important to seek the best reason for any exceptions. If this issue is an important cornerstone in the revision of the copyright law, that is one reason, but Mr. Nimmer was not convinced that that is the fact. He preferred not to start with prior conclusions. He suggested that the Commission staff study the feasibility of the specific payment methods mentioned in the report and other possible fee arrangements. Once the economics of the situation are known the Commission will be in a better position to consider the entire issue.

Mr. Hersey shared these doubts about viewing the copying of a whole work as fair use. Dr. Dix did not agree; he argued that single copying is fair use. There have been forty years of experience of copying on this principle, so that this seems a logical point of departure.

Mr. Lacy indicated that journal publishers have taken the view that when there was random copying of a single article for a single user, there was no objection to including it as an exempted use under Section 108. The real issue comes when there is organized and systematic reproduction of copies.

Ms. Wilcox cautioned that there may be too much focus here on libraries. Some libraries are keeping records on their copying -- only about 2 or 3 percent of copying is done in libraries; much more copying goes on outside of libraries and this is not tabulated. Mr. Sarbin hoped that the Commission's work would help to measure the extent to which photocopying takes place outside of libraries and teaching activities -- the extent to which there is infringement by commercial enterprises.

Judge Fuld referred to the lack of studies of corporate photocopying; here we get into the matter of law enforcement; no one contends that such copying is legal. Dr. Dix hoped the Commission could also look at copying in face-to-face teaching activities. Ms. Ringer said this was deliberately omitted from the Commission's mandate because discussions are still in process and answers are being drawn that will take some legislative form. There is a lot of photocopying in the educational area that does not involve face-to-face teaching.

Mr. Nimmer agreed that the Commission has enough to do in the areas clearly assigned to it. He moved that Mr. Levine be asked to have an in-depth study made of the complexities and problems involved in the various collection approaches envisioned in this report and other possible methods; such a study should involve use of economic and engineering resources as required. A study also should be arranged of non-library copying by profit libraries and other corporate reproduction, including the policing problem, with consideration of alternatives for dealing with infringements. The motion was seconded.

Discussion brought out the fact that answers to some of the questions are already available in other studies; such information could be collected without undertaking new studies. At Mr. Perle's request, Mr. Levine outlined the schedule of work before the Commission:

June 15, 1976 - the Commission should have completed part of its work on which it can make an interim report.

July 15, 1976 - a draft of the interim report must be sent to each Commissioner.

August 15, 1976 - comments on the interim report should be in Mr. Levine's hands.

September 15, 1976 - the interim report must go to the printer.

October 8, 1976 - interim report must be issued.

Mr. Levine suggested that the photocopying issue might be the appropriate subject for this first report. It would seem wise to invite interested persons to testify and present their views. These would include publishers of scientific and technical journals. It might be more useful to concentrate in this area rather than pursue photocopying and computer uses of copyrighted works simultaneously. Mr. Lacy agreed that open hearings would be desirable, but he pointed out the self-serving, argumentative presentations that may result from such a procedure. It might be useful to ask specific questions, such as: Where should the line be drawn, assuming that there will be some method of payment? What would be the most acceptable method? Conduct of hearings can be broken up into separate groups. Mr. Lacy suggested that perhaps a total program of work for the Commission should be outlined by Mr. Levine and circulated prior to the December meeting; this plan should include hearings, educational sessions, studies that may need to be made, etc. Commissioners could then send their comments to Mr. Levine in advance of the next meeting.

Mr. Nimmer withdrew his motion, as did its seconder, and it was decided instead to proceed in the way suggested by Mr. Lacy and to continue on the dual plan, i.e., photocopying and computer production of copyrighted works. Ms. Karpatkin remarked that the interim report need not be detailed; she emphasized the need for a plan of action; the Commissioners need to determine what they want to know. Hearings and written questionnaires will also be useful.

It was indicated that since the members of the Commission were appointed so late after the establishment of the Commission, it would probably be possible to get an extension of deadlines if this should be necessary.

9. Plans for next meetings. The Commission agreed on the following schedule:

Thursday and Friday, December 18-19, 1975

December 18 - White Plains, N.Y.
December 19 - New York City
(perhaps at N.Y. Bar Association)

Thursday and Friday, February 12-13, 1975
Washington

March - hearings by subcommittees of the Commissioners on different dates in New York and Washington

April 1-2 - Commission meeting

10. Ms. Ringer commended the ad hoc group on photocopying on its contribution, which should be very useful.

11. The meeting was adjourned at 4:10 p.m.

Marlene Morrisey
Executive Assistant to the Librarian of Congress
November 24, 1975